UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

ANTONIO HANDLEY, Plaintiff, v. WEXFORD HEALTH SOURCES, INC., *et al.*, Defendants.	)	No. 2:21-cv-00058-JPH-MKK

ORDER ON DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

Antonio Handley alleges that Defendants were deliberately indifferent to his need of treatment for cataracts for approximately two years while he was incarcerated at Wabash Valley Correctional Facility. The defendants have moved for summary judgment. For the reasons set forth below, the Wexford Defendants' motion, dkt. [95], is **granted in part** as to Defendants Wright and McDonald, while the Centurion Defendants' motion, dkt. [92], is **granted**.

I.
Standard of Review

Parties in a civil dispute may move for summary judgment, which is a way of resolving a case short of a trial. *See* Fed. R. Civ. P. 56(a). Summary judgment is appropriate when there is no genuine dispute as to any of the material facts, and the moving party is entitled to judgment as a matter of law. *Id.*; *Pack v. Middlebury Cmty. Schs.*, 990 F.3d 1013, 1017 (7th Cir. 2021). A "genuine dispute" exists when a reasonable factfinder could return a verdict for the

nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "Material facts" are those that might affect the outcome of the suit. *Id.*

When reviewing a motion for summary judgment, the Court views the record and draws all reasonable inferences from it in the light most favorable to the nonmoving party. *Khungar v. Access Cmty. Health Network*, 985 F.3d 565, 572–73 (7th Cir. 2021). It cannot weigh evidence or make credibility determinations on summary judgment because those tasks are left to the fact-finder. *Miller v. Gonzalez*, 761 F.3d 822, 827 (7th Cir. 2014). The Court is only required to consider the materials cited by the parties, *see* Fed. R. Civ. P. 56(c)(3); it is not required to "scour every inch of the record" for evidence that is potentially relevant. *Grant v. Trs. of Ind. Univ.*, 870 F.3d 562, 573-74 (7th Cir. 2017).

"[A] party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). "[T]he burden on the moving party may be discharged by 'showing'—that is, pointing out to the district court—that there is an absence of evidence to support the nonmoving party's case." *Id.* at 325.

II.
Factual Background

Because the defendants have moved for summary judgment under Rule 56(a), the Court views and recites the evidence "in the light most favorable to the nonmoving party and draw[s] all reasonable inferences in that party's favor." *Zerante v. DeLuca*, 555 F.3d 582, 584 (7th Cir. 2009) (citation omitted).

At all times relevant to the allegations in the Complaint, Mr. Handley was a prisoner incarcerated at Wabash Valley Correctional Facility. He names as defendants two entities and four individuals that were involved in some aspect of his efforts to obtain cataract treatments. Wexford of Indiana, LLC, and Centurion Health of Indiana, LLC, are private companies that have contracted to provide health services to Indiana Department of Correction (IDOC) prisoners. Wexford was the IDOC's medical contractor when Mr. Handley began experiencing cataracts, and Centurion took over as the medical contractor on July 1, 2021. Wexford employed Dr. Michael Mitcheff as regional medical director, Amy Wright as director of nursing, and Adrina McDonald as a medical records clerk. Centurion employed Dr. Naveen Rajoli as a physician.

In February 2020, Mr. Handley began to experience a permanent, "clouded fog" that limited his vision. Dkt. 92-3 at 35:22–36:8. On February 19, Mr. Handley submitted a request for healthcare, stating that his vision was very poor in his right eye, even with his glasses on, and growing progressively worse. Dkt. 9-2 at 5. He asked to be referred to an eye doctor. *Id.*

Ms. McDonald reviewed Mr. Handley's request and responded on February 24 that he would be scheduled for an appointment with an eye doctor. *Id.* Since

Ms. McDonald was employed by Wexford as a medical records clerk, she was not licensed to treat patients as a doctor or nurse. Dkt. 97-1 at ¶¶ 1–2.

Dr. Dennis Lewton, an optometrist who is not a defendant in this case, examined Mr. Handley on March 4, 2020. Dkt. 92-2 at 6–10. It is not clear whether Dr. Lewton was a Wexford employee or subcontractor. According to Dr. Lewton, Mr. Handley had 20/25 vision in his left eye, but vision in his right eye had worsened from 20/25 to 20/70 in only three months. *Id.* at 7. He diagnosed Mr. Handley with a cataract in the right eye. *Id.*

Dr. Lewton did not have authority to direct that Mr. Handley or any other inmate receive specific treatment for cataracts. Dkt. 105-1 at 43. Rather, he was required to submit a written request, subject to approval by a Wexford official, that Mr. Handley be referred for treatment by a doctor outside the prison. *Id.* Dr. Lewton submitted paperwork requesting that Mr. Handley be scheduled for a visit with an ophthalmologist to consider surgical cataract removal. Dkt. 92-2 at 7.

The record does not contain a written response to Dr. Lewton's request, although the designated evidence shows that it was denied. On March 18, 2020, Mr. Handley submitted a health care request asking whether Dr. Lewton's request had been approved. Dkt. 92-2 at 11. Amy Wright, who was employed by Wexford as Director of Nursing at Wabash Valley, responded on March 20: "This was not approved at this time. Per note in EMR you do not currently meet the criteria. Will be monitored on [site] by Dr. Lewton." *Id.* Dr. Lewton stated in an affidavit that Dr. Michael Mitcheff, Wexford's regional medical director, denied

his request "because it did not meet the criteria for a surgery consult." Dkt. 105-1 at 38. Dr. Lewton understood that Wexford maintained a policy under which a patient would not be referred for a surgical consultation until visual acuity in *both* eyes was 20/50 or worse. *Id.* He "was directed to monitor the cataract at the facility." *Id.*

Dr. Mitcheff's responsibilities as regional medical director included reviewing referral requests and determining "if the request was medically necessary, or if there were potential alternative treatments that would be a better fit for the patient or needed to be exhausted first before proceeding with off-site care." Dkt. 97-3 at ¶ 4. To his knowledge, Wexford "did not maintain an explicit cataract policy in the state of Indiana." *Id.* at ¶ 6. Still, he determined that Mr. Handley "did not meet the criteria for a necessary referral to an off-site ophthalmologist for a cataract surgery consultation." *Id.* at ¶ 8.

Dr. Mitcheff states in his summary judgment affidavit that he denied Dr. Lewton's referral request primarily because Mr. Handley still had "relatively good visual acuity" in his left eye.[1] *Id.* at ¶ 9. Dr. Mitcheff also states in his affidavit that a referral was not necessary because there was no evidence of other symptoms, because the worsening of Mr. Handley's vision was sudden (suggesting it may not be due to a cataract), and because "there was no indication that the fundus could not be visualized."[2] *Id.* at ¶ 9.

[1] Dr. Mitcheff's affidavit mistakenly discusses Mr. Handley as first developing a cataract in his left eye, not his right, as the medical records reflect.

[2] Dr. Mitcheff does not say what a fundus is or how it is relevant to this matter. The Court understand that the fundus "is the inside, back surface of the eye" and consists

Dr. Mitcheff does not designate any documents that were created at or around the time he denied Dr. Lewton's request that set forth the reasons for his decision. Instead, He points only to an entry in a spreadsheet stating "ATP DOES NOT MEET CRITERIA MONITOR ONSITE." Dkt. 97-6. It is not clear who authored this statement, and, in any event, it provides no reasoning.

Mr. Handley submitted a third health care request on March 23, 2020, only days after receiving Nurse Wright's communication that his referral was denied. Dkt. 92-2 at 13. In this request, Mr. Handley reiterated Dr. Lewton's diagnosis that surgical referral was necessary to treat the cataract. *Id.* Nurse Wright responded the following day that Mr. Handley did "not meet criteria" and would "be monitored on site." *Id.*

Over a year later, on July 14, 2021, Mr. Handley submitted a health care request stating that he had cataracts in *both* eyes and was suffering from severe migraine headaches. Dkt. 92-2 at 15. At this point, Centurion had recently taken over from Wexford as the contract medical services provider at Wabash Valley. In response to the July 14, 2021, request, a nurse examined Mr. Handley's eyes on July 16 and documented that his vision had worsened to 20/100 in his right eye and 20/70 in the left. *Id.* at 15–16. Dr. Lewton then examined Mr. Handley on July 21, measured his vision as 20/200 in the right eye and 20/80 in the left,

"of the retina, macula, optic disc, fovea, and blood vessels." American Academy of Ophthalmology, *Fundus*, https://www.aao.org/eye-health/anatomy/fundus#:~:text=The%20fundus%20is%20the%20inside,find%2C%20watch%20and%20treat%20disease. (last visited June 23, 2023).

and diagnosed cataracts in both eyes. *Id.* at 19–21. He again requested that Mr. Handley be referred for a surgical consultation. *Id.*

Centurion approved Dr. Lewton's request on August 6, 2021. Dkt. 92-2 at 22. Dr. Naveen Rajoli, a Centurion physician, notified Mr. Handley at a chronic care appointment on September 9 that the referral was approved. *Id.* at 24–26.

Dr. Samuel Byrd of Centurion contacted an ophthalmologist on September 15, 2021, to request an appointment. *Id.* at 29. Six weeks later, he received confirmation of Mr. Handley's appointment on January 6, 2022. *Id.* at 30.

Mr. Handley submitted a health care request on December 16, 2021, noting that he still had not received his surgical consultation and his condition was worsening. Dkt. 92-2 at 49. A staff member responded promptly and notified Mr. Handley that his consultation was scheduled. *Id.*

The consultation took place as scheduled on January 6, 2022. Dkt. 92-2 at 50–51. The cataract was removed from Mr. Handley's right eye on February 23. *Id.* at 57–59. On March 4, the ophthalmologist noted that Mr. Handley was struggling to see with both eyes open and recommended surgery to remove the cataract from his left eye. *Id.* at 64–66. That procedure took place on May 18. *Id.* at 70–74.

III.
Discussion

The Eighth Amendment's prohibition against cruel and unusual punishment imposes a duty on the states, through the Fourteenth Amendment, "to provide adequate medical care to incarcerated individuals." *Boyce v. Moore*,

314 F.3d 884, 889 (7th Cir. 2002) (citing *Estelle v. Gamble*, 429 U.S. 97, 103 (1976)). "Prison officials can be liable for violating the Eighth Amendment when they display deliberate indifference towards an objectively serious medical need." *Thomas v. Blackard*, 2 F.4th 716, 721–22 (7th Cir. 2021). "Thus, to prevail on a deliberate indifference claim, a plaintiff must show '(1) an objectively serious medical condition to which (2) a state official was deliberately, that is subjectively, indifferent.'" *Johnson v. Dominguez*, 5 F.4th 818, 824 (7th Cir. 2021) (quoting *Whiting v. Wexford Health Sources, Inc.*, 839 F.3d 658, 662 (7th Cir. 2016)).

To survive summary judgment, Mr. Handley must designate evidence showing that the defendants acted with deliberate indifference—that is, that they consciously disregarded a serious risk to his health. *Petties v. Carter*, 836 F.3d 722, 728 (7th Cir. 2016). Deliberate indifference requires more than negligence or even objective recklessness. *Id.* Mr. Handley "must provide evidence that an official actually knew of and disregarded a substantial risk of harm." *Id.* "Of course, medical professionals rarely admit that they deliberately opted against the best course of treatment. So in many cases, deliberate indifference must be inferred from the propriety of their actions." *Dean v. Wexford Health Sources, Inc.*, 18 F.4th 214, 241 (7th Cir. 2021) (internal citations omitted).

The Seventh Circuit has "held that a jury can infer deliberate indifference when a treatment decision is 'so far afield of accepted professional standards as to raise the inference that it was not actually based on a medical judgment.'" *Id.* (quoting *Norfleet v. Webster*, 439 F.3d 392, 396 (7th Cir. 2006)). The Seventh

Circuit has also held that deliberate indifference may be inferred when a medical provider:

- refuses "to take instructions from a specialist." *Petties*, 836 F.3d at 729.
- persists "in a course of treatment known to be ineffective." *Id.* at 729–30.
- chooses "an 'easier and less efficacious treatment' without exercising professional judgment." *Id.* at 730 (quoting *Estelle*, 429 U.S. at 104 n.10).
- effects "an inexplicable delay in treatment which serves no penological interest." *Id.*

But where the evidence shows that a decision was based on medical judgment, a jury may not find deliberate indifference, even if other professionals would have handled the situation differently. *Dean*, 18 F.4th at 241–42.

A. Wexford Defendants

Mr. Handley concedes that Ms. McDonald and Nurse Wright are entitled to summary judgment, dkt. 105 at 18–19, so the Court's analysis is limited to Mr. Handley's claims against Dr. Mitcheff and Wexford.

1. Dr. Mitcheff

Dr. Mitcheff concedes for purposes of summary judgment that a jury could find that the cataract in Mr. Handley's right eye was a serious medical condition. Dkt. 96 at 19. He argues that he is nonetheless entitled to summary judgment because his denial of Dr. Lewton's referral request was based on medical judgment after considering numerous factors. *Id.* at 19–20.

While Dr. Mitcheff's affidavit provides some support for his position, there remain disputed material issues. First, Dr. Mitcheff's seven-word explanation of

the denial does not reflect medical judgment but merely recites "ATP DOES NOT MEET CRITERIA MONITOR ONSITE." Dkt. 97-6. And second, documents from Nurse Wright and Dr. Lewton also show that Dr. Mitcheff denied the request because Mr. Handley's cataracts did not meet certain unspecified criteria for a surgical referral. Dkt. 92-2 at 11; dkt. 105-1 at 38.

From this evidence, a jury could accept Dr. Mitcheff's explanation and find in his favor. But a jury could also find from the designated evidence that Dr. Mitcheff arbitrarily refused to refer Mr. Handley for a surgical consultation, or that he based his decision on a list of criteria without determining if Mr. Handley met the criteria. Considering that Dr. Mitcheff denied Dr. Lewton's recommendation, the lack of evidence demonstrating that Dr. Mitcheff's decision was based on medical judgment, and that Mr. Handley received no alternative treatment for his cataract, Mr. Handley is entitled to present his claim against Dr. Mitcheff to a jury. *See Petties*, 836 F.3d at 729–30.

2. Wexford

Private corporations acting under color of state law—including those that contract with the state to provide essential services to prisoners—are treated as municipalities for purposes of § 1983. *Dean v. Wexford Health Sources, Inc.*, 18 F.4th 214, 235 (7th Cir. 2021). To prevail on a § 1983 claim against a municipality, the plaintiff "must challenge conduct that is properly attributable to the municipality itself." *First Midwest Bank ex rel. LaPorta v. City of Chicago*, 988 F.3d 978, 986 (7th Cir. 2021).

"[T]hree types of actions . . . can support municipal liability under § 1983: (1) an express policy that causes a constitutional deprivation when enforced; (2) a widespread practice that is so permanent and well-settled that it constitutes a custom or practice; or (3) an allegation that the constitutional injury was caused by a person with final policymaking authority." *Id.* (internal quotations omitted). "Inaction, too, can give rise to liability in some instances if it reflects 'a conscious decision not to take action.'" *Dean*, 18 F.4th at 235 (quoting *Glisson v. Indiana Dep't of Corr.*, 849 F.3d 372, 381 (7th Cir. 2017)).

The plaintiff must also prove that the municipal defendant's action or inaction caused a constitutional violation. *LaPorta*, 988 F.3d at 986. "This is a high bar." *Id.* at 987. The plaintiff "must prove that it was obvious that the municipality's action would lead to constitutional violations and that the municipality consciously disregarded those consequences." *Id.* Moreover, the plaintiff "must prove that the municipality's action was the 'moving force' behind the federal-rights violation." *Id.* (quoting *Board of County Commissioners v. Brown*, 520 U.S. 397, 404 (1997)). "[O]ne key is to distinguish between the isolated wrongdoing of one or a few rogue employees and other, more widespread practices." *Howell v. Wexford Health Sources*, 987 F.3d 647, 654 (7th Cir. 2021). Typically, this requires "proof either of an express policy that is unconstitutional or a widespread practice or custom affecting other individuals or showing repeated deliberate indifference toward the plaintiff." *Id.* at 655.

Here, Wexford asserts that Mr. Handley did not suffer any constitutional violation and that, regardless, he has not identified an unconstitutional Wexford

policy or practice. But both sides have designated evidence indicating that Wexford maintained "criteria" for referring cataract patients for surgical consultations. Dkt. 97-6 ("ATP DOES NOT MEET *CRITERIA* MONITOR ONSITE.") (emphasis added); *see also* dkt. 92-2 at 11; dkt. 105-1 at 38. Dr. Mitcheff states plainly in his affidavit that he denied Dr. Lewton's request because "it was [his] determination that Mr. Handley did not meet the *criteria* for a necessary referral to an off-site ophthalmologist for a cataract surgery consultation." Dkt. 97-3 at ¶ 8 (emphasis added). A jury could reasonably infer that these "criteria"—the basis of Dr. Mitcheff's denial of Dr. Lewton's request—refer to a Wexford policy, practice or custom.

Moreover, Dr. Lewton attested that Wexford maintained a policy under which a patient would not be referred for a surgical consultation until visual acuity in *both* eyes was 20/50 or worse. Dkt. 105-1 at 38. Wexford confronts this evidence only by noting that it obtained summary judgment in an action in a different jurisdiction and involving a similar policy—but also, necessarily, involving a different factual record. Dkt. 108 at 15. Here, Dr. Lewton's statement is additional evidence from which a jury could infer that Mr. Handley's cataract removal was delayed due to a Wexford policy, practice, or custom.

Having found that a jury could reasonably determine that Dr. Mitcheff was deliberately indifferent to Mr. Handley's serious need for cataract surgery, a jury could similarly find from the designated evidence that Dr. Mitcheff denied the request for a surgical consultation based on rigid "criteria" or the "20/50" policy or practice Dr. Lewton described. A jury could fairly determine that the *purpose*

of such criteria, policy, or practice was to limit or delay surgical consultations for cataracts in cases deemed serious by specialists. In other words, a jury could reasonably infer that Wexford consciously disregarded serious risks to inmates' health by placing adherence to the criteria above individualized patient assessment. Summary judgment for Wexford is therefore not appropriate.

C. The Centurion Defendants

The evidence against Dr. Rajoli and Centurion tells a different story. Wexford was the medical contractor at Wabash Valley when Mr. Handley submitted multiple medical treatment requests and when Dr. Lewton's surgical referral for cataract treatment was denied in March 2020. Consequently, Mr. Handley did not receive the recommended cataract treatment for over a year. After Wexford's contract ended on July 1, 2021, however, Mr. Handley submitted another request for cataract treatment on July 14, 2021. In response, he was examined by a nurse on July 16, seen by Dr. Lewton on July 21, and Dr. Lewton's request for a surgical consultation was approved on August 6. Then on September 15 Dr. Byrd contacted the ophthalmologist to schedule an appointment.

Mr. Handley maintains that Dr. Rajoli and Centurion were deliberately indifferent to his need for care and that this is evidenced by the fact that he did not actually meet with an ophthalmologist until January 2022. *See* dkt. 105 at 21. For several reasons, though, a jury could not find deliberate indifference from that delay alone.

First and foremost, Dr. Rajoli and Centurion cannot be held liable for the entire five-month period between approval of the surgical consultation and the consultation itself. They were not the only parties involved in scheduling Mr. Handley's surgical consultation—or, for that matter, the two operations that followed—which required cooperation and availability from the ophthalmologist's office. Further, there is no evidence that an appointment was available before January 2022 or that Dr. Rajoli or any Centurion employee could have done anything to obtain an earlier appointment. *See, e.g.*, *Williams v. Duncan*, No. 20-1847, 2021 WL 4025152, at *2 (7th Cir. Sept. 3, 2021) ("As for the week-long delay in scheduling the surgery, there is no evidence that Dr. Coe was even aware of it. . . . And there is no dispute that the delay originated with the surgeon's staff, not the prison's medical team.").

It may be tempting to attribute greater responsibility to Dr. Rajoli and Centurion for the time that passed between approval of the surgical consultation and the time it was scheduled (as opposed to the when the consultation took place). Viewed in the light most favorable to Mr. Handley, the record shows that the consultation was approved on August 6, the medical staff contacted the ophthalmologist's office on September 15, and the ophthalmologist's office confirmed the appointment on October 29—about a twelve-week process in all.

"A delay in treatment may constitute deliberate indifference if the delay exacerbated the injury or unnecessarily prolonged an inmate's pain." *McGowan v. Hulick*, 612 F.3d 636, 640 (7th Cir. 2010). But every delay is not

unconstitutional. "Instead, the length of delay that is tolerable depends on the seriousness of the condition and the ease of providing treatment." *Id.*

The delay between approving and scheduling Mr. Handley's consultation was unfortunate, but there is no evidence that it appreciably worsened or exacerbated Mr. Handley's cataracts or caused him to suffer pain. By contrast, the record in *McGowan* reflected a delay of approximately six weeks between the time the defendant knew of the plaintiff's need for oral surgery and the time he took any steps to arrange it. *Id.* at 638–39. Following a problematic tooth extraction, McGowan developed a sinus perforation and fistula—an opening between his mouth and his sinus cavity—that resulted in pain, an infection that spread up his face, and a golf-ball-sized mass inside his mouth. *Id.* The Seventh Circuit found that combination of symptoms and delay could support a finding of deliberate indifference. *Id.* at 640–41. Here, Mr. Handley experienced a delay of similar length for treatment of a serious medical condition, but there is no indication that he was in need of urgent care like McGowan was, or that the delay caused him to suffer pain like McGowan did.

Moreover, there is no evidence that would allow a jury to attribute that delay to Dr. Rajoli or Centurion. The medical records reflect that Dr. Byrd, Ms. McDonald, and administrative assistant Abigail Cooper were involved in scheduling Mr. Handley's consultation. Dkt. 92-2 at 29–30. There is no evidence that Dr. Rajoli was responsible for or involved in scheduling appointments with outside specialists or that he knew of any delay in scheduling Mr. Handley's appointment. Without such evidence, no jury could find that Dr. Rajoli was

deliberately indifferent to any risk posed by the delay. *See Williams*, 2021 WL 4025152, at *2 ("As for the weeklong delay in scheduling this surgery, there is no evidence that Dr. Coe was even aware of it."); *Cose v. Gorske*, 761 F. App'x 603, 607 (7th Cir. 2019) (Plaintiff "first argues that for seven months Gorske delayed scheduling his appointment with the orthopedic specialist, but Cose has not furnished evidence that Gorske was responsible for that delay.").

In any case, deliberate indifference by some Centurion employee would not be enough for Mr. Handley to prevail in a claim against Centurion. To recover from Centurion, Mr. Handley would have to show that the scheduling delay was caused by a policy, practice, or custom that Centurion implemented even though it was obvious it would cause harmful delays for patients like Mr. Handley. *LaPorta*, 988 F.3d at 986. There is no evidence connecting Mr. Handley's scheduling delay to a Centurion policy or practice—much less a policy or practice adopted in deliberate indifference.

Summary judgment is therefore appropriate for Mr. Handley's claims against Dr. Rajoli and Centurion.

IV.
Conclusion

The Wexford defendants' motion for summary judgment, dkt. [95], is **granted** as to Defendants Wright and McDonald and **denied** as to Dr. Mitcheff and Wexford. The Centurion defendants' motion for summary judgment, dkt. [92], is **granted**.

No partial final judgment will issue. The **clerk is directed** to **terminate** Defendants Wright, McDonald, Rajoli, and Centurion from the docket.

The remaining claims will be resolved by settlement or trial. The **clerk is directed** to include form motions for leave to proceed *in forma pauperis* and for assistance with recruiting counsel with Mr. Handley's copy of this order. If Mr. Handley wishes for the Court to assist him in recruiting a lawyer, he must complete and return both forms, along with a current inmate trust account statement, **no later than July 30, 2023**. Alternatively, Mr. Handley will have **through July 30** to notify the Court that he wishes to continue *pro se*; that he has obtained his own attorney; or that he is financially ineligible for the appointment of counsel. *See* 28 U.S.C. 1915(e)(1); dkt. 6 (denying motion for leave to proceed *in forma pauperis*).

SO ORDERED.

Date: 6/23/2023

James Patrick Hanlon

James Patrick Hanlon
United States District Judge
Southern District of Indiana

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